

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Connect America Fund</b>	)	<b>WC Docket No. 10-90</b>
	)	
<b>A National Broadband Plan for Our Future</b>	)	<b>GN Docket No. 09-51</b>
	)	
<b>Establishing Just and Reasonable Rates for Local Exchange Carriers</b>	)	<b>WC Docket No. 07-135</b>
	)	
<b>High-Cost Universal Service Support</b>	)	<b>WC Docket No. 05-337</b>
	)	
<b>Developing an Unified Intercarrier Compensation Regime</b>	)	<b>CC Docket No. 01-92</b>
	)	
<b>Federal-State Joint Board on Universal Service</b>	)	<b>CC Docket No. 96-45</b>
	)	
<b>Lifeline and Link-Up</b>	)	<b>WC Docket No. 03-109</b>

**COMMENTS OF RNK COMMUNICATIONS**

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Dated: April 1, 2011

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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**COMMENTS OF RNK INC. D/B/A RNK COMMUNICATIONS**

In response to the Federal Communications Commission's ("Commission" or "FCC") Public Notice issued in the above-captioned proceedings,<sup>1</sup> RNK Inc. d/b/a RNK Communications ("RNK") hereby respectfully submits the following comments.

**I. INTRODUCTION AND SUMMARY**

RNK, a small, privately-held company, based in Dedham, Massachusetts, and founded in 1992, has grown from its initial niche of local resale and prepaid long distance calling cards to an Integrated Communications Provider, marketing local and interexchange telecommunications

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<sup>1</sup> See *Comment and Reply Comment Dates Established for Comprehensive Universal Service Fund and Intercarrier Compensation Reform Notice of Proposed Rulemaking*, Public Notice, DA 11-411, CC Docket Nos. 96-45, 01-92, WC Docket Nos. 03-109, 05-337, 07-135, 10-90 and GN Docket No. 09-51 (rel. March 2, 2011).

services, as well as Internet Services and IP-enabled services. RNK and/or its affiliates are certified facilities-based Competitive Local Exchange Carriers (“CLECs”) and/or interexchange carriers in Connecticut, the District of Columbia, Florida, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia that offer wholesale and retail residential and business telecommunications services and interconnected VoIP services. In addition, RNK has authority to resell certain forms of telecommunications in Maine, Texas, and Vermont, as well as international 214 authority from the Federal Communications Commission. Via its own facilities and those resold from other carriers and providers, RNK serves a variety of customers with a broad range of telecommunications and non-telecommunications services.

In response to the proposals set forth in the *USF/ICC Reform NPRM*,<sup>2</sup> RNK believes that waste, inefficiencies, and arbitrage opportunities in the current intercarrier compensation system should be addressed by the Commission, but should be done so in a rational, pragmatic and comprehensive fashion—a difficult task given the years of rhetoric and rancor put forth by parties on all sides of the intercarrier compensation debate. Clearly, the current system needs fixing. However, RNK submits that the Commission should wield the heavy hand of federal regulation in a restrained manner, keeping in spirit with the actions of Commissions since the passage of the 1996 Telecommunications Act that have permitted the telecommunications industry to grow and flourish. This is not the time for hasty action, but rather judicious use of

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<sup>2</sup> *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (“*USF/ICC Reform NPRM*”)

considered judgment, using the least harmful means possible to an industry that forms a significant backbone of our nation's economy.

First, the Commission should apply traditional intercarrier compensation rules for interconnected VoIP traffic. RNK believes that this is the most practical solution to the legal and regulatory stalemate that has caused numerous billing disputes and legal controversies over the last few years. Of course, individual carriers should be permitted to contract into alternative compensation regimes, and the Commission should not discourage such market-based solutions. Of course, interconnected VoIP traffic is only a partial subset of all PSTN-IP and IP-PSTN traffic. However, the majority of the controversies seem to surround assertions by carriers that disputed traffic is interconnected VoIP traffic, and that such traffic is exempt from access charges.

Second, RNK generally agrees with the Commission's proposed rules regarding phantom traffic. However, in these proposals the Commission fails to heed the concerns RNK raised in 2008 regarding true international traffic, and the unique challenges faced by carriers such as RNK that act as intermediate carriers in international call termination chains.<sup>3</sup> RNK applauds the Commission's general requirement that all carriers supply complete and accurate call originating and terminating information. RNK believes, though, that a practical application of the rules is necessary, and that any new prescribed rules should simply require that intermediate carriers transmit call identifying information to the extent—and to the degree—they receive it.

Third, RNK is concerned that the Commission's self-report "trigger" for so-called "traffic pumping" or "access stimulation" is ripe for abuse. RNK opposes the Commission's reliance on the presence of revenue-sharing agreements as a "trigger" to indicate the presence of "traffic

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<sup>3</sup> *Comments of RNK Communications*, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 99-200, CC Docket No. 96-98, CC Docket No. 01-92, CC Docket No. 99-68, WC Docket No. 04-36 (submitted Nov. 26, 2008) ("*2008 RNK ICC Comments*") at 12-19.

pumping” or “access stimulation.” While revenue sharing agreements may be used (and abused) by carriers, RNK submits that the mere presence of revenue sharing agreements are not the best indicator of access stimulation, but that high rates and large increases in traffic over prior periods (with some reasonable exceptions) are generally more correlated with this activity. Moreover, RNK believes that the Commission should make clear that any “trigger” would only apply to CLECs or ILECs whose access rates are not already at the level of the competing BOC or largest ILEC in the state, since those access rates are presumptively arbitrage-proof.

Finally, RNK does not necessarily disagree with the Commission’s suggestion that local exchange carriers should not receive reciprocal compensation payments under Section 20.11 of the Commission’s rules, absent an agreement between the LEC and the CMRS carrier, provided that LECs—especially CLECs—are provided with procedural safeguards to protect against CMRS carrier stalling and other tactics to avoid payment. Specifically, RNK proposes that CLECs be given the right to compel interconnection negotiations with CMRS carriers, and that such negotiations be subject to Section 251/252 timelines and processes. In addition, state commissions should be given the explicit power, pursuant to regulation, to set default rates for intrastate intraMTA traffic. Finally, the trigger for payment obligations by CMRS carriers would begin when the LEC requests negotiations, which would be at the rate agreed to by the carriers or arbitrated by a state commission, unless otherwise agreed to by the parties. In the alternative, RNK proposes that to save time and costs, a CLEC should be able to use the state-approved TELRIC reciprocal compensation rate in the state where the traffic is being exchanged. These reforms would help level the playing field between CMRS carriers and CLECs, who often encounter CMRS carrier foot-dragging and refusals to negotiate unless CLECs agree to a boilerplate bill-and-keep arrangement.

## **II. ABSENT CONTRACTUAL ARRANGEMENTS, TRADITIONAL INTERCARRIER COMPENSATION RULES SHOULD APPLY TO INTERCONNECTED VOIP TRAFFIC.**

The Commission, in the *NPRM*, observed that it “never addressed whether interconnected VoIP is subject to intercarrier compensation rules and, if so, the applicable rate for such traffic.”<sup>4</sup> The Commission also noted that its “lack of clarity” in the regulatory regime applicable to interconnected VoIP traffic exchanged on the PSTN has not only led to disagreements between carriers at the business level, but has also been the subject of litigation between LECs, IXCs, and other carriers performing PSTN “gateway”-type services on behalf of interconnected VoIP providers.<sup>5</sup> The time has come for the Commission to declare that interconnected VoIP traffic that terminates on the PSTN—or PSTN traffic that terminates on an interconnected VoIP service—is subject to the same intercarrier compensation rules as PSTN-to-PSTN traffic. The only caveat should be that the Commission should permit carriers to negotiate rates for interconnected VoIP traffic that differ from traditional intercarrier compensation arrangements.

The Telecommunications Act of 1996<sup>6</sup> defines telecommunications as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”<sup>7</sup> Analysis of both PSTN-to-interconnected VoIP and interconnected VoIP-to-PSTN calls would show that this definition is satisfied, in both cases.

First, a call from the PSTN to an interconnected VoIP service station (e.g., a SIP phone) is clearly telecommunications. The PSTN end user specifies the called point by dialing a 7 or

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<sup>4</sup> *USF/ICC Reform NPRM* at ¶608

<sup>5</sup> *Id.* See also fn. 913.

<sup>6</sup> 47 U.S.C. §151 *et seq.*

<sup>7</sup> 47 U.S.C. §153(43)

10 digit NANPA number. Next, the PSTN caller speaks and the interconnected VoIP called party will hear the caller's voice—interconnected VoIP service, by definition, “[e]nables real-time, two-way voice communications.”<sup>8</sup> Thus, the caller and called party are using voice to communicate. Moreover, the calling party chooses the words spoken. Therefore, the three essential parts of the definition—(1) specified points, (2) intentional communication of specified information from caller to called party, and (3) no change in “form or content” of information—are satisfied by a PSTN-interconnected VoIP call.

A call from an interconnected VoIP service to a PSTN end user, using the same analysis, requires the same conclusion, that the definition of telecommunications is satisfied. It is irrelevant in this analysis that an interconnected VoIP service may use packet switching over a broadband connection while a PSTN telephone utilizes a circuit-switched network. These calls are both “telecommunications.” Thus, they are indistinguishable from traditional PSTN-to-PSTN calls, or, to put it another way, it “walks like a duck.”

This analysis does not require that interconnected VoIP be declared a telecommunications service, or an information service. The Commission has recognized that telecommunications “is not limited . . . to particular services.”<sup>9</sup> In fact, as shown above, it is irrelevant to the analysis what device or protocol is used (in these situations) to place or receive the call.

This characteristic counsels that the Commission should subject all interconnected VoIP-PSTN telecommunications to the same intercarrier compensation regime as PSTN-to-PSTN calls. The Commission should do this for practical reasons, as well as sound policy reasons.

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<sup>8</sup> 47 C.F.R. §9.3

<sup>9</sup> *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking* (“2008 ICC Remand Order/Further Notice”), FCC 08-262, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122, (rel. November 5, 2008) at ¶8.

First, and most importantly, the Commission should subject interconnected VoIP-PSTN compensation to the traditional intercarrier compensation rules because the traffic, much like the process of making the calls, is indistinguishable from traditional PSTN traffic. In each case, NANPA numbers are used for both originating and terminating points. From a technical perspective, the call records for PSTN-VoIP calls look like PSTN calls. In fact, the lack of differences between PSTN-VoIP calls and PSTN calls has resulted in the proliferation of intercarrier “certifications”—in other words, “trust us, these calls are VoIP” with the inevitable disputes and litigation that follows.<sup>10</sup> After all, if there was a simpler way to differentiate PSTN-VoIP calls from PSTN calls, the industry would already have found it.

Next, the Commission discusses “alternative” compensation schemes for interconnected VoIP, such as immediate bill and keep,<sup>11</sup> applying only interstate rates to interconnected VoIP,<sup>12</sup> or even deferring compensation obligations to some future date.<sup>13</sup> The problem with all of these potential solutions is that they all perpetuate the existing arbitrage opportunities (or indeed create new ones) associated with the current lack of clarity regarding compensation for interconnected VoIP calls and perpetuate differentiation between similar traffic.

The true reason for the litigation associated with interconnected VoIP compensation is that some carriers are exploiting the uncertainty about VoIP traffic. As the Commission notes,

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<sup>10</sup> See, e.g., *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc., and other affiliates*, C-2009-2093336, Motion of Chairman James H. Cawley (Pa. P.U.C., February 11, 2010) (intrastate access charges properly applied to certain interconnected VoIP traffic); *Request for Expedited Declaratory Ruling as to the Applicability of the Intrastate Access Tariffs of Blue Ridge Telephone Company, Citizens Telephone Company, Plant Telephone Company, and Waverly Hall Telephone LLC to the Traffic Delivered to Them by Global NAPs, Inc.*, Docket No. 21905, Order Adopting in Part and Modifying in Part the Hearing Officer’s Initial Decision, Document No. 121910, (Ga. P.S.C. July 29, 2009) (same); *Pacific Bell Telephone Company d/b/a AT&T California v. Global NAPs California, Inc.*, Modified Presiding Officer’s Decision Finding Global NAPs California in Breach of Interconnection Agreement, Case No. 07-11-018, D.08-09-027 (Cal. P.U.C., September 18, 2008) (interconnection agreement requiring payment of access charges for VoIP enforceable).

<sup>11</sup> *USF/ICC Reform NPRM* at ¶615.

<sup>12</sup> *Id.* at ¶619

<sup>13</sup> *Id.* at ¶617

some VoIP providers brag about their lack of payment.<sup>14</sup> The whole notion of arbitrage rests on there being a lack of parity between one system (e.g., VoIP) and another (PSTN). If the Commission subjects VoIP to “traditional” intercarrier compensation obligations, there will be no regulatory loophole for carriers to exploit and carriers will be on equal footing going forward.

Finally, the Commission should prescribe rules that permit carriers to “contract around” any intercarrier compensation rules associated with PSTN-VoIP calls. Because the “ill” that regulation of intercarrier compensation for PSTN-VoIP traffic seeks to cure is that of preventing arbitrage, inefficiency, and wasted resources, voluntary agreements entered into by carriers should be respected by the Commission and state commissions. For example, two carriers may interconnect for the transport and termination of PSTN-VoIP calls and agree that bill-and-keep should apply to those calls. In that instance, the carriers entered into a voluntary arrangement for compensation. The Commission should encourage, rather than discourage, private resolution of these issues. Consequently, any final rules should permit carriers to negotiate bilateral compensation arrangements, or in the circumstance where agreement has already been reached, the rules should preserve those agreements.

### **III. THE PHANTOM TRAFFIC RULES MUST PERMIT SELECTIVE BLOCKING OF TRAFFIC.**

The Commission has proposed new signaling rules that require all providers that originate PSTN traffic, or traffic destined for the PSTN, to populate the calling party’s telephone number in the call signaling information.<sup>15</sup> In addition, the Commission proposes requiring that intermediate providers of telecommunications (i.e., usually interexchange carriers (“IXCs”)) “must pass, unaltered, to subsequent carriers in the call path, all signaling information identifying

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<sup>14</sup> *Id.* at fn. 920

<sup>15</sup> See *USF/ICC Reform NPRM* at Appendix B (proposed amendments to 47 C.F.R. §64.1601(a)(1)-(2))

the telephone number of the calling party, and, if different, of the financially responsible party that is received with a call.”<sup>16</sup> As a provider that often is an intermediate carrier for international and interstate calls, RNK believes that the Commission’s rules do not go far enough to protect intermediate carriers, who, through no fault of their own are given no-CPN calls to deliver.

The Commission should permit, as RNK suggested in its 2008 comments on the subject, intermediate or terminating carriers to block no-CPN calls in excess of a Commission-set threshold.<sup>17</sup> Currently, there is a market for no-CPN calls. There will continue to be a market for that traffic, so long as carriers are required to terminate those calls in excess of a reasonable safe harbor percentage (to account for genuine technical errors and the like.)

Merely *punishing* carriers that strip caller identifying information is a time-intensive and costly process that will involve the scarce enforcement resources of the Commission. Allowing responsible carriers to block CPN-less traffic that exceeds a pre-set percentage of the total traffic sent by the intermediate carriers will almost immediately stop the practice. Carriers that source these calls will then be forced to either populate the proper fields—if they are an originating carrier—or, if they are an intermediate carrier themselves, will refuse to take on originating carriers whose calls will be blocked by downstream providers.

If selective blocking of calls is not permitted, then intermediate and terminating carriers will suffer for the misdeeds of the originating and intermediate carriers that fail to populate CPN. For example, some terminating LECs have adopted *intrastate* tariff provisions that purport to apply intrastate access rates to all CPN-less traffic above a certain percentage.<sup>18</sup> An innocent intermediate carrier that happens to send traffic above that threshold is left paying high access

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<sup>16</sup> *Id.*

<sup>17</sup> 2008 RNK ICC Comments at 12-19.

<sup>18</sup> See, e.g., Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE New Hampshire PUC Tariff No. 85—Access Services, Section No. 2.5.10.B.3

rates for the traffic, regardless of where it really originated. This is a misapplication of the jurisdictionalization process.

Instead of allowing terminating carriers to *profit* from phantom traffic, intermediate carriers—and terminating carriers—should be permitted to block this traffic. Innocent intermediate carriers, upon realizing that calls are being blocked, will deal with this problem in real time, as opposed to having to take time to locate and back-bill originating carriers. Moreover, carriers will be encouraged to avoid blocking situations altogether, by ensuring the signaling fields are properly populated.

#### **IV. ANTI-TRAFFIC PUMPING RULES SHOULD BE BASED ON TRAFFIC LEVELS.**

The Commission has proposed revisions to its interstate access rules to address the purported problem of “access stimulation” or “traffic pumping.” RNK opposes any rule that would create a situation where a carrier is deprived of intercarrier compensation associated with its customer’s calls. Indeed, RNK believes that the problem of “access stimulation” for which the incumbents and major IXCs have raised the hue and cry is one of their own invention, and will create arbitrage opportunities in and of itself—namely, the ability to terminate traffic without paying. RNK supports comprehensive reform that will eliminate or reduce arbitrage opportunities and cease piecemeal litigation and regulatory efforts that create new ones. RNK opposes any suggestion that one type of customer’s traffic should be treated any differently than another. As stated herein, the problem is not customers that are serviced by LECs or associated individual business agreements, but the intercarrier rates that are charged. However, should the Commission continue to address these issues individually, any actions taken by this Commission must be rationally related to the perceived problem.

In the *USF/ICC Reform NPRM*, the Commission focuses on the situation of “revenue sharing arrangements . . . that result in a net payment to [another] entity over the course of the agreement.”<sup>19</sup> However, the Commission’s emphasis on net payments to a third party (ostensibly the subscriber of local exchange service, but not necessarily so) while ignoring the true impetus of the practices the Commission seeks to curtail, such as implausible traffic surges, and unreasonably high rural switched access rates, is a solution that fails to address the real reasons for traffic pumping and access stimulation. Furthermore, the Commission’s solution appears to be dependant upon a self-certification regime that will invite more disputes rather than curtail them.

Curbing arbitrage is clearly a laudable goal. However, the Commission should ask itself whether more regulation of LEC business activity is the most efficient way to achieve this goal. In this respect, the Commission’s solution misses the mark. Instead of punishing legitimate business activity, as marketing incentives are commonplace in many industries as legitimate ways of increasing revenues and encouraging new customers to obtain service, the real focus should be on the hallmark of traffic pumping: surges in switched access minutes beyond historical levels for ILECs and rural CLECs that benchmark bloated rural access rates.

In fact, the rules proposed by the Commission implicitly admit that rural access rates are the problem. The Commission correctly finds that revenue sharing should not be included in a rate-of-return LEC’s revenue requirement or costs of service.<sup>20</sup> Next, the Commission proposes that suspected traffic pumpers should not receive the benefit of benchmarking the NECA tariff.<sup>21</sup> However, after addressing these rate problems, the Commission, in the *USF/ICC Reform NPRM*, proposes to address the agreements entered into between carriers and customers. Such a

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<sup>19</sup> *USF/ICC Reform NPRM* at ¶659.

<sup>20</sup> *USF/ICC Reform NPRM* at ¶661

<sup>21</sup> *Id.* at ¶662

conclusion is unsupported by the facts and is inconsistent with the Commission's actions in the past. Of course, RNK believes that no carrier should be able to set rates as high as some of the NECA bands permit—but here again, the problem is ultra-high access rates, not necessarily revenue sharing or the customers served.

Therefore, the Commission should adopt a minutes of use trigger. For example, if a carrier's semi-annual interstate switched access minutes in a particular LATA exceed a growth factor of 50% over the previous 6 month timeframe, the access stimulation trigger would be met and the carrier would be presumed (albeit a rebuttable presumption) to be engaging in access stimulation activity.<sup>22</sup> At that point, the carrier would not be allowed to benchmark at the corresponding rural ILEC rate, but at the rate of the BOC or largest ILEC in the same state.

This standard is fair, objective, and permits carriers to engage in legitimate business activities (i.e., revenue sharing). Arguably, the Commission could eliminate the entire problem by lowering rural access rates to the BOC rate or comprehensive reform—then the arbitrage opportunity would vanish, as there would be no differential in rates between rural and non-rural carriers. At a point of rate parity, it makes no difference whether revenue is shared or what type of traffic a carrier is terminating, since all carriers within the marketplace would receive (and pay) the same intercarrier compensation for the traffic.

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<sup>22</sup> The Commission has used a rebuttable presumption before in addressing dial-up ISP traffic *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) at ¶79; *remanded but not vacated by WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). A rebuttable presumption would allow a carrier to justify an inordinate growth in traffic, for example, if a carrier gained a major state contract.

**V. CLECS SHOULD HAVE THE RIGHT TO COMPEL INTERCONNECTION NEGOTIATIONS WITH CMRS PROVIDERS WITH ANY OTHER REFORM.**

Finally, the Commission seeks comment on the impact of its *North County*<sup>23</sup> decision on the issue of traffic pumping. As the Commission reports, the wireless industry claims that the current regulatory environment encourages traffic stimulation. To the contrary, the regulatory vacuum created by the Commission's current CMRS-LEC compensation rule, combined with the uncertainty engendered by the *North County* decision has left CLECs in the position of accepting default bill-and-keep arrangements with no means to compel CMRS carriers to even negotiate other terms. After all, why would a CMRS provider negotiate an interconnection agreement when (a) it is not required to and (b) by not negotiating or having an agreement, it does not have to pay? Indeed, CMRS providers are taking advantage of this vacuum and exploiting the arbitrage opportunity created by it.<sup>24</sup>

The Commission should, as it posited,<sup>25</sup> provide a federal pricing methodology for reciprocal compensation between CMRS providers and CLECs. This will finally close the loophole of which some CMRS providers have taken advantage. Each state commission would be permitted—in fact, empowered, by federal regulation—to implement this pricing methodology in a manner similar to that done for ILECs. Moreover, in lieu of providing expensive cost studies or other data which have never been required for competitive entities, CLECs should be entitled to charge the prevailing wireline reciprocal compensation rate

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<sup>23</sup> *North County Communications Corp. v. MetroPCS California, LLC*, Memorandum Opinion and Order, 24 FCC Rcd 3807 (Enf. Bur. 2009), *pet. for recon. granted in part and denied in part*, 24 FCC Rcd 14036 (2009), *pet. for rev. pending sub nom., MetroPCS California, LLC v. FCC*, No. 10-1003 (D.C. Cir. filed Jan. 11, 2010).

<sup>24</sup> RNK is not suggesting that all CMRS providers are engaging in this practice, and indeed, there are CMRS carriers that negotiate in good faith, however, absent a rule change CLECs are at the mercy at benevolence of CMRS carriers.

<sup>25</sup> *USF/ICC Reform NPRM* at ¶673

corresponding to the BOC or largest ILEC in the state.<sup>26</sup> This will provide a starting point for negotiations and save precious state commission resources.

The most important reform, however, would be procedural. Currently, there is no mechanism to compel CMRS providers to act in good faith and come to the bargaining table to reach an interconnection agreement. Currently, it appears that some wireless providers prefer this situation, because it allows them to exploit an arbitrage opportunity and pay zero intercarrier compensation on traffic sent to CLECs. RNK believes that if they are permitted to commence negotiations and, if necessary, arbitrate agreements in the fashion that Sections 251/252 of the Act contemplate, many of these issues will be resolved in a much more efficient manner than currently possible. If such a mechanism were in place, RNK would accept the notion, set forth by the Commission that LECs would not be able to charge until a request for negotiation has been received or an agreement has been signed.<sup>27</sup>

## **VI. CONCLUSION**

RNK, in large part, believes that Commission action on the above-mentioned aspects of intercarrier compensation is long-overdue. As the Commission proceeds, however, it must not yield to the temptation of quick-fixes or respond to the fear-mongering of the few and powerful. Rather, RNK believes that rational intercarrier reform will be achieved, but only by empowering providers (such as permitting blocking of phantom traffic and compelling negotiations with CMRS providers), finding and punishing only the actual bad behavior of so-called traffic pumpers (i.e., those carriers that spike switched access demand), and recognizing that

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<sup>26</sup> This Commission has previously seen fit to cap CLEC rates at those of the competing ILEC. *See* 47 C.F.R. § 61.26.

<sup>27</sup> *Id.*

interconnected VoIP-to-PSTN traffic (and the reverse) is the same as PSTN traffic. These represent immediate steps that the Commission can take toward the shared goal of intercarrier compensation reform.

Respectfully submitted,

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